

Conversely, claimant contends the evidence contained in the preliminary hearing record proves she suffered a left knee injury while working for the respondent on August 2, 2000. Also, claimant argues, after the August 2, 2000 accident, her left knee gave out on one occasion and locked up on another occasion causing her to fall at home. But claimant contends those two subsequent incidents are the natural and probable consequence of her initial August 2, 2000, work-related left knee injury and are not separate intervening non-work-related accidents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Appeals Board finds the preliminary hearing Order should be affirmed.

On August 2, 2000, claimant was employed by the respondent, a personnel and temporary employment agency. Claimant was assigned to work for Coleman Company at the Beacon factory located at Maize, Kansas. On that date, claimant was working on a platform that she described as being two stairs in height. Claimant's job was to take bottles off a conveyor belt. As claimant was going on a break at the end of her shift, claimant testified she stepped down hard off the platform and felt a pop in her left knee. Normally there was a step stool for her to step off the platform, but for some reason the step stool was not in place.

Claimant testified her left knee was not very bad at the time she left work. But when claimant woke up the next morning, August 3, 2000, her left knee was swollen and she could hardly walk. Claimant testified she then telephoned respondent and "I told them I was getting off work and hurt my leg and I was going to the emergency room." Claimant did not know the name of the person she spoke with when she telephoned the respondent.

Respondent had its lead personnel manager, Rebecca Ashmore, testify before the Administrative Law Judge at the preliminary hearing. She identified a telephone log kept by the respondent that showed claimant had called respondent on August 3, 2000, at 11:05 a.m. That telephone log was admitted into the preliminary hearing record. The message that was typed in the telephone log reads as follows:

She just called in and said that she tripped yesterday in front of her car leaving work and hurt her ankle, she will not be at work today because she is going to the doctor, I asked her what she tripped on and she said a rock I guess, I don't know!!

Ms. Ashmore testified she was present when the receptionist took the telephone message from the claimant. But Ms. Ashmore further testified she did not hear the telephone conversation between the receptionist and claimant.

Claimant, however, testified she did not give the receptionist the message typed into the telephone log. Claimant explained she does not own a car and she was being transported to and from work by a cab that picked her up at work and took her home which was paid by SRS. Also, claimant testified, and the medical records admitted at the preliminary hearing verify, that claimant's only injury was to her left knee and she had no complaints of pain or discomfort in her ankle.

On August 3, 2000, claimant sought medical treatment for her left knee injury at Wesley Medical Center emergency room. The emergency room medical records were admitted into evidence at the preliminary hearing. The August 3, 2000, medical record indicates that claimant fell at work and injured her left knee. The emergency room doctor examined the claimant and diagnosed claimant with left knee pain and effusion. Claimant's left knee was placed in a brace, medication was prescribed and claimant was referred by the emergency room doctor to see Dr. B. Bruner as soon as possible for a follow-up appointment.

On August 5, 2000, while claimant was still recuperating from her left knee injury, claimant testified she was standing on a chair hanging drapes and her left knee gave away causing her to fall from the chair to the floor. This caused increased pain in her injured left knee. Claimant was transported by the Emergency Medical Service (EMS) to the Wesley Medical Center emergency room. X-rays were taken and all were negative. Claimant was placed on crutches and instructed not to place weight on her left leg. Her left leg was again placed in a brace, medication was prescribed and claimant was referred to an orthopedic physician for further examination and treatment.

On August 24, 2000, claimant was walking up a flight of stairs from the basement carrying an empty laundry basket when her left knee locked up and she fell. Claimant was again taken by EMS to the Wesley Medical Center emergency room. X-rays were ordered and were negative. Claimant's left knee was found to have some swelling but no deformity. Claimant was released with instructions of no weight bearing for the left leg, continue to wear the knee brace, medication was prescribed, an MRI examination appointment was made and claimant was to follow up with an appointment with Dr. B. Bruner.

Claimant attempted to set an appointment to see Dr. Bruner but his office told claimant that Dr. Bruner was not authorized to treat her. At the November 30, 2000, preliminary hearing, claimant testified her left knee remained symptomatic and the symptoms increased with activity. Additionally, claimant testified she had no previous problems with her left knee either locking up or giving away until after the August 2, 2000, work-related injury.

Respondent points out a number of discrepancies between claimant's preliminary hearing testimony, the EMS reports and the Wesley Medical Center emergency room records admitted into the preliminary hearing record. Additionally, the respondent points out that the accident description that respondent's receptionist typed into respondent's telephone log is inconsistent with claimant's preliminary hearing testimony. Furthermore, respondent contends the two non-work-related incidents that claimant had at home on August 5, 2000 and August 24, 2000, were intervening, non-work-related accidents that caused additional injury to claimant's left knee resulting in claimant's current need for medical treatment.

The Administrative Law Judge found claimant proved she injured her left knee while employed by the respondent on August 2, 2000. The Appeals Board finds the Administrative Law Judge, in making that finding, must have believed claimant when she testified the information contained in the medical records that conflicted with her testimony did not accurately reflect what she told the medical personnel recording the information in the medical records. Also, the Appeals Board finds the Administrative Law Judge must have determined that the August 5, 2000 and the August 24, 2000, incidents at home were not separate non-work-related incidents but were the natural and probable consequence of her initial August 2, 2000, work-related knee injury. The Appeals Board finds this conclusion is supported by claimant's testimony that before the August 2, 2000, work-related accident she had no problems with her left knee either giving away or locking up.

In this case there is no direct conflicting testimony between claimant and other witnesses, except for the testimony of Ms. Ashmore, respondent's lead personnel manager. As admitted by Ms. Ashmore, she did not personally hear the telephone conversation between respondent's receptionist and claimant that resulted in the description of the accident that was typed in the respondent's telephone log.

The Appeals Board does find, however, that there is some conflict between the information contained in the medical records and claimant's testimony. Thus, the Appeals Board finds, as it has in the past, at this juncture of the proceedings, when there is a conflict between claimant's testimony and other witnesses or information contained in the preliminary hearing record, some deference should be given to the Administrative Law Judge's conclusions. The Administrative Law Judge had the opportunity to observe the in-person testimony of the claimant and, therefore, was able to assess her credibility. Accordingly, giving some deference to the Administrative Law Judge's conclusions, the Appeals Board finds the preliminary hearing Order should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's November 30, 2000, preliminary hearing Order, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January, 2001.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director